

FILED/ACCEPTED

DEC - 4 2007

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

Federal Communications Commission  
Office of the Secretary

In the Matter of	)	EB Docket No. 07-197
	)	
Kurtis J. Kintzel, Keanan Kintzel, and all	)	File No. EB-06-IH-5037
Entities by which they do business before the	)	
Federal Communications Commission	)	FRN: 0007179054
	)	
Resellers of Telecommunications Services	)	NAL/Acct. No. 200732080029

To: Richard L. Sippel  
Chief Administrative Law Judge

**ENFORCEMENT BUREAU'S OPPOSITION TO MOTION OF THE KINTZELS,  
ET AL., TO MODIFY THE ISSUES, OR, IN THE ALTERNATIVE,  
STATEMENT OF OBJECTIONS TO THE ORDER TO SHOW CAUSE**

No. of Copies rec'd 0+6  
List ABCDE

## TABLE OF CONTENTS

INTRODUCTION .....	1
ARGUMENT .....	1
I.     The Motion is an Unjustified Request for Deletion or Premature Request for Summary Decision of an Issue .....	1
II.    The Motion is an Unjustified Request for Modification or Inappropriate Petition for Reconsideration .....	5
III.   Modification of the Order to Show Cause to Include a More Definite Statement is Unavailable and Unjustified .....	11
CONCLUSION .....	13

## INTRODUCTION

1. On November 16, 2007, Kurtis J. Kintzel, Keanan Kintzel, and all entities by which they do business (collectively, the "Kintzels"), filed a pleading entitled, "Motion of the Kintzels, et. al., to Modify the Issues, or, in the Alternative, Statement of Objections to the Order to Show Cause" ("Motion").<sup>1</sup> The Enforcement Bureau hereby requests that the Presiding Judge dismiss the Motion as procedurally defective or deny the Motion on the merits. In support whereof, the following is shown.

2. The Motion advances a hodgepodge of arguments which, collectively, are apparently intended to impede the course of this hearing proceeding. Although the Motion is styled as a request to modify the issues and objections to the Order to Show Cause, a careful reading of the pleading reveals that it may be more appropriately characterized as a premature motion for summary decision of various issues or an impermissible petition for reconsideration of the Order to Show Cause. As shown below, the relief sought should be rejected.

## ARGUMENT

### **I. The Motion is an Unjustified Request for Deletion or Premature Request for Summary Decision of an Issue**

3. While nominally styled as a motion to modify the issues in the Order to Show Cause, at least one portion of the Motion is more properly viewed as a motion for deletion under Section 1.229<sup>2</sup> or summary decision under Section 1.251<sup>3</sup> of the Commission's rules. As explained more

---

<sup>1</sup> The Motion was originally filed on October 26, 2007. However, because it was improperly directed to the Commission, the Presiding Judge ordered the Kintzels to file a consent motion to withdraw the Motion and file a correctly captioned first page. The Kintzels filed their "Consent Motion to Withdraw the 'Motion to Modify Issues' from the Commission Docket" on November 16, 2007.

<sup>2</sup> 47 C.F.R. § 1.229.

<sup>3</sup> 47 C.F.R. § 1.251.

fully below, deletion and summary decision of any issue in this proceeding at this time is entirely unjustified and/or premature.

4. In Section VI of the Motion, the Kintzels seek to have the Presiding Judge delete from the Order to Show Cause the issue pertaining to the alleged discontinuance of service.<sup>4</sup> However, in considering a motion to delete issues from a hearing designation order, the Presiding Judge must determine “whether specific reasons are stated for [Commission] action or inaction ... rather than merely considering whether the petitioner relies on new facts or whether [the Commission was] aware of the general matter upon which [the presiding offer] relies.”<sup>5</sup>

5. The Commission explained its reasons for including the issues relating to discontinuance of service in the Order to Show Cause,<sup>6</sup> noting “Kintzel also conceded [in the response to the Bureau’s letter of inquiry] that Buzz and BOI had discontinued service to all customers in each state where they had been providing services despite having failed to request and obtain Commission authorization to do so.”<sup>7</sup> Because the Commission gave a reasoned analysis for inclusion of these issues in the Order to Show Cause, the Presiding Judge may not delete those issues.<sup>8</sup>

---

<sup>4</sup> The Motion states that it is seeking to have the discontinuance of service “allegations” deleted. See Motion at 15. However, motions under Section 1.229 may only seek modification of issues. If the relief sought is deletion of the issues relating to the alleged discontinuance of service, those issues are contained in paragraph 24(a) and (e) of the Order to Show Cause.

<sup>5</sup> *Applications of Atlantic Broadcasting Co., et al.*, Memorandum Opinion and Order, 5 FCC2d 717, ¶ 10 (1966) (“*Atlantic Broadcasting*”).

<sup>6</sup> See Order to Show Cause at 3, 4-5, ¶¶ 6, 8, 11.

<sup>7</sup> Order to Show Cause at 4, ¶ 8. Thus, the Commission was clearly aware of the January 17, 2007 response to the Bureau’s letter of inquiry (“LOI Response”). That response specifically discussed, among other things, the fact that BOI and Buzz were resellers of Qwest long distance services, as well as BOI and Buzz’s contention that Qwest was responsible for the discontinuance of service. A copy of the LOI Response is attached hereto as Exhibit 1.

<sup>8</sup> The request for deletion also is inappropriate because it does not meet the requirements of Section 1.229(d), which provides that motions to enlarge, change or delete issues “shall contain

6. Furthermore, the relief requested in Section VI of the Motion, with respect to the discontinuance of service allegations in the Order to Show Cause, is in the nature of a motion for summary decision rather than a motion to delete because it implicitly argues that there are no genuine issues of material fact and that the Kintzels are entitled to judgment as a matter of law.

7. In order for the moving party to be entitled to summary decision, it bears the burden of showing: (1) the absence of genuine issues of material fact; and (2) that it is entitled to judgment as a matter of law.<sup>9</sup> Summary decision is an extraordinary remedy that should only be granted “where the parties are in agreement regarding the factual inferences that may be properly drawn from the record.”<sup>10</sup> As the moving party, the Kintzels bear the burden of establishing, based on their papers, that summary decision would be appropriate.<sup>11</sup> Mere allegations are

---

specific allegations of fact sufficient to support the action requested.” 47 C.F.R. § 1.229(d). Those factual allegations must be supported by affidavits made on personal knowledge. *Id.* While the Motion contains a multitude of factual allegations, it fails to support those allegations with an affidavit made on personal knowledge. Rather, the Motion is supported by the Affidavit of Kurtis J. Kintzel, sworn on October 26, 2007 (the “Kintzel Affidavit”), attached as Exhibit A to the Motion. This one-paragraph affidavit states in its entirety that Mr. Kintzel has read the motion “and that the facts stated therein are true and correct to the best of my knowledge, information, and belief.” It is impossible to tell from the Kintzel Affidavit which facts are based on Mr. Kintzel’s personal knowledge and which are based on information and belief. Thus, the Kintzel Affidavit cannot be viewed as an affidavit made on personal knowledge sufficient to support a motion to enlarge, change or delete issues. For this reason, as well as for the reasons set forth in detail below, the Motion must be denied.

<sup>9</sup> 47 C.F.R. § 1.251(a)(1). See also *Matter of Family Broadcasting, Inc.*, Order to Show Cause, 17 FCC Rcd 6180, 6188 ¶ 27 (2002) (“*Family Broadcasting*”); *Applications of Martha J. Huber, et al.*, Summary Decision, 9 FCC Rcd 85, 86, ¶ 14 (A.L.J. Richard L. Sippel 1993) (“*Huber*”).

<sup>10</sup> *Family Broadcasting, Inc.*, 17 FCC Rcd at 6188 ¶ 27.

<sup>11</sup> 47 C.F.R. § 1.251(a)(1). See also *Matter of Summary Decision Procedures*, Report and Order, 34 FCC2d 485, ¶6 (1972) (“*Summary Decision Procedures*”), quoting Ernest Gellhorn, “Summary Judgment in Agency Adjudication,” at 30 (April 1, 1970) (“The party moving for summary decision has the burden of establishing through a written record that no triable issue exists; and he has this burden even with respect to issues upon which the opposing party would have the burden at the hearing.”); *Huber*, 9 FCC Rcd at ¶14.

insufficient to meet that burden.<sup>12</sup> The Motion fails to meet these stringent requirements. Moreover, the Bureau has not yet had discovery that would enable it to dispute the purported facts asserted by the Kintzels in support of the Motion.

8. The Motion sets forth numerous factual allegations in support of the requested relief.<sup>13</sup> However, it cites to no admissible evidence in support of those facts, nor does it attach any supporting documents, with the potential exception of the Kintzel Affidavit and a letter from Qwest to a Leslie Anderson at an unidentified entity.<sup>14</sup>

9. The Kintzel Affidavit cannot support the relief requested because it states only that "the facts stated [in the Motion] are true and correct to the best of my knowledge, information, and belief."<sup>15</sup> A generalized affidavit on information and belief is insufficient to support a motion for summary decision. Rather, the affidavit must be made on personal knowledge and must "set forth such facts as would be admissible in evidence, and ... show affirmatively that the affiant is competent to testify to the matters stated therein."<sup>16</sup> The Kintzel Affidavit does not attempt to parse out which facts in the Motion Mr. Kintzel affies to on personal knowledge and which he affies to on information and belief. Nor does the Affidavit demonstrate that Mr. Kintzel is competent to testify to any of the facts that seemingly are incorporated by reference into the Affidavit.

10. Moreover, there is no affiant testifying as to the authenticity of the letter from Qwest, describing the circumstances under which it was written or how it was maintained, or

---

<sup>12</sup> 47 C.F.R. § 1.251(a)(1). *See also Huber*, 9 FCC Rcd at ¶ 14.

<sup>13</sup> *See* Motion at 6-9, 14-15, 17.

<sup>14</sup> *See* Exhibits A and B to Motion.

<sup>15</sup> Exhibit A.

<sup>16</sup> 47 C.F.R. § 1.251(c).

describing who Leslie Anderson is.<sup>17</sup> Under these conditions, the Presiding Judge cannot conclude that there are no genuine issues of material fact, nor that the Kintzels are entitled to judgment as a matter of law. Because the Kintzels have not met their burden under Section 1.251, the Motion must be denied.

11. Even had the Motion met Section 1.251's requirements, which it has not, summary decision is premature and would be inappropriate at this stage of the proceedings. The Bureau has not yet had the opportunity to seek discovery and thus is not yet in a position to rebut the numerous factual allegations in the Motion. For instance, the Bureau has had no opportunity to cross-examine Kurtis Kintzel and Leslie Anderson. The Bureau is entitled and must be permitted to pursue discovery prior to adjudication of the issues on the merits.

## **II. The Motion is an Unjustified Request for Modification or Inappropriate Petition for Reconsideration**

12. As noted in paragraph 3, *supra*, the Motion is nominally styled as a motion to modify the issues in the Order to Show Cause. However, various portions of the Motion are more properly viewed as a motion for modification under Section 1.229<sup>18</sup> or as a petition for reconsideration under Section 1.106(a)(1)<sup>19</sup> of the Commission's rules. As explained more fully below, modification at this time is entirely unjustified and/or premature, and the Presiding Judge may not consider a petition for reconsideration.

---

<sup>17</sup> Exhibit B to the Motion is cited only in support of the relief sought in Section VI of the Motion (discontinuance of service allegations).

<sup>18</sup> 47 C.F.R. § 1.229.

<sup>19</sup> 47 C.F.R. § 1.251.

13. *Section III of the Motion seeks to have the Presiding Judge reduce the amounts of the proposed forfeitures in the Order to Show Cause.*<sup>20</sup> Section IV of the Motion argues that the inclusion in the Order to Show Cause of violations of the consent decree between the Commission and various entities controlled by Kurtis and Keanan Kintzel dated on or about February 13, 2004 in connection with a proceeding under EB Docket No. 03-85 (the "Consent Decree") and violations of Commission rules that arise out of the same behavior violate the Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution.<sup>21</sup> Section V of the Motion seeks a separate hearing of the Consent Decree violations pursuant to Section 1.95 of the Commission's rules.<sup>22</sup> Finally, Section VII of the Motion seeks to have the Presiding Judge delete from the Order to Show Cause the proposed individual liability against Kurtis and Keanan Kintzel (the "Kintzel Brothers").<sup>23</sup> Sections III, IV, V and VII of the Motion are not appropriate motions for modification, and the Presiding Judge should not grant the modifications sought by the Motion.

---

<sup>20</sup> See Motion at 4-9. The requested modification does not pertain to any of the issues set for determination. Rather, it pertains solely to the amounts of the proposed forfeitures.

<sup>21</sup> See *id.* at 9-12. The Motion does not actually seek any specific relief in Section IV. Rather, it simply states that the "intent to impose additional punishment" for both Consent Decree violations and violations of Commission rules arising out of the same behavior "is barred by the Double Jeopardy Clause of the U.S. Constitution." Motion at 12. Moreover, the Motion asserts that the purportedly offending issues include subparagraphs (a) through (i) of paragraph 24 of the Order to Show Cause. See Motion at 11. However, subparagraph (d), alleging violation of Paragraph 15 of the Consent Decree by failing to make required voluntary contributions in a timely manner, does not have a corresponding allegation for violation of a Commission rule. Moreover, subparagraphs (h) and (i), alleging violations of the Commission's rules by failing to respond fully and completely to one or more Commission inquiries and by engaging in slamming, have no corresponding allegations for violation of the Consent Decree. Thus, subparagraphs (d), (h) and (i) are not properly included in this portion of the Motion.

<sup>22</sup> See Motion at 12-14. Presumably, this implicates each of the issues set for determination in the Order to Show Cause.



14. The requests are not based on any argument that the Commission failed to thoroughly consider these very matters when it adopted the Order to Show Cause,<sup>24</sup> nor could they be.<sup>25</sup> First, with respect to Section II of the Motion, the Order to Show Cause contains a lengthy discussion of the history underlying the instant proceeding, including a discussion of the earlier proceeding that led to the Consent Decree,<sup>26</sup> demonstrating a reasoned analysis of this matter by the Commission. Moreover, seeking reduction of the proposed forfeiture amounts in the Order to Show Cause is premature not only because the Bureau should be permitted to engage in discovery, but also because the proposed forfeiture amounts are just that – *proposed amounts*. Indeed, in paragraphs 31-33, the proposed forfeiture amounts are all prefaced by the phrase “in an amount not to exceed.” Until such time as the Presiding Judge determines that the Kintzels are liable for the alleged violations and issues an ordering setting forth the forfeiture amounts for which the Kintzels are liable, any ruling regarding the constitutional propriety of the proposed forfeiture amounts would be advisory in nature. Such a ruling would be inappropriate.

---

<sup>23</sup> See *id.* at 16-18. As with the relief sought in Section V of the Motion, the relief requested in Section VII of the Motion presumably implicates each of the issues set for determination in the Order to Show Cause, as they each include proposed liability against the Kintzel Brothers.

<sup>24</sup> See, e.g., *Atlantic Broadcasting, supra*, ¶ 5.

<sup>25</sup> The only possible exception is the argument in Section III of the Motion requesting reduction of the proposed forfeiture amounts. That portion of the Motion contains a recitation of various facts of which the Kintzels believe the Commission was unaware. See Motion at 6-9. However, a motion under Section 1.229 must be accompanied by an affidavit setting forth facts supporting the requested action, which facts must be based on the affiant's personal knowledge. As discussed in note 7, *supra*, the Kintzel Affidavit does not state which facts in the Motion are based on Mr. Kintzel's knowledge and which are based solely on information and belief. Such an affidavit cannot be sufficient to support modification of a Commission action.

<sup>26</sup> See Order to Show Cause, at 1-3, ¶¶ 2-5. Section 1.80(b)(4) clearly states that in determining the amount of a forfeiture penalty, the Commission is to take into consideration “the nature, circumstances, extent and gravity of the violations and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.” 47 C.F.R. § 1.80(b)(4).

15. Second, as to Section IV of the Motion, the Order to Show Cause considered the distinction between violations of the Consent Decree and violations of Commission rules.<sup>27</sup>

Indeed, the Order to Show Cause specifically addresses the fact that "violations of a consent order represent a serious breach of the Commission's rules that must be deterred."<sup>28</sup>

---

<sup>27</sup> See Order to Show Cause, at 4-6, ¶¶ 9-14.

<sup>28</sup> See *id.* at 4, ¶ 9. Regardless, the issues set for determination in the Order do not violate the Double Jeopardy Clause. First, the penalties for the alleged offenses at issue are legislatively authorized. *Missouri v. Hunter*, 459 U.S. 359, 368-69 (1982). Congress expressly provided for the imposition of forfeitures against a party for each separate violation of a Commission rule or order. Section 503(b)(1) of the Communications Act of 1934, as amended (the "Act") provides that a person "shall be liable to the United States for a forfeiture penalty" for the willful or repeated failure "to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission under this Act. . . ." 47 U.S.C. § 503(b)(1)(B). Section 503(b)(2)(B) of the Act provides for forfeiture penalties of "\$100,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,000,000 for *any single act or failure to act* described in paragraph (1) of this subsection." 47 U.S.C. § 503(b)(2)(B) (emphasis supplied). (As discussed in paragraph 22, *infra*, the amounts provided for in Section 503(b)(2)(B) have been increased to \$130,000 and \$1,325,000, respectively.)

Violation of a consent decree constitutes violation of a Commission rule and, in the instant case, violation of a Commission order. Under its express terms, the alleged violations of the Consent Decree constitute alleged violations of a Commission order for which the Commission is entitled "to exercise any rights and remedies attendant to the enforcement of a Commission order." Consent Decree at 10, ¶ 23. A true and correct copy of the Consent Decree, along with the Adopting Order, is attached as Exhibit 2 hereto. Section 1.95 of the Commission's rules provides that a party to a consent order may be subject "to any further sanctions for violation noted as agreed upon in the consent order." 47 C.F.R. § 1.95. The alleged violations of the Consent Decree are distinct from the alleged violations of Sections 63.71, 54.706 and 64.604(c)(5)(iii)(A) of the Commission's rules, 47 C.F.R. §§ 63.71, 54.706 and 64.604(c)(5)(iii)(A), set for determination by the Order. Each of the separate alleged rule and order violations is subject to the forfeiture penalties provided for in Section 503(b)(2)(B) of the Act. Thus, where, as here, penalties may be imposed "for any single act or failure to act," the penalties sought for violation of both the Consent Decree and violation of a Commission rule do not violate the Double Jeopardy Clause.

The Motion's Double Jeopardy argument also fails because the Consent Decree violations require proof of a fact that violation of other Commission rules does not. The Order specifies for determination whether the Kintzels, among other things, willfully or repeatedly violated the Consent Decree based on discontinuance of service with first notifying the Commission or the appropriate state regulatory authority, failure to make universal service contributions and failure to make TRS contributions. See Order to Show Cause, ¶ 24(a)-(c). It

16. Third, with respect to Section V of the Motion, the Commission gave thorough consideration to the provisions of Section 1.95, finding that waiver of that section would promote administrative efficiency and would serve the public interest:

Where, in addition to possible consent order violations, there are also alleged violations of Commission rules that arise out of the same misconduct, relate closely to the alleged violations of a consent order, and collectively raise very serious questions about the fundamental qualifications of the entities in question, it is administratively efficient and would serve the public interest to consider such issues in a consolidated proceeding. We therefore waive Section 1.95 to the extent that it would otherwise restrict the scope of this proceeding to allow a comprehensive inquiry into all of the apparent violations referenced above committed by the Kintzel brothers.<sup>29</sup>

Because the Order to Show Cause contains a reasoned analysis of the Commission's decision to waive Section 1.95's requirement of a separate hearing for violations of consent orders,<sup>30</sup> thereby establishing good cause for the waiver,<sup>31</sup> the Presiding Judge may not modify the Order to Show Cause to set the alleged Consent Decree violations for a hearing separate from the alleged violations of Commission rules.

---

further specifies for determination whether the Kintzels willfully or repeatedly violated Sections 63.71, 54.706 and 64.604(c)(5)(iii)(A) of the Commission's rules by those same actions or inactions. *See* Order to Show Cause, ¶ 24(e)-(g). While it is tempting to say that there is a complete identity between the alleged Consent Decree violations and the alleged rule violations, there in fact is not. At least three facts are necessary to prove the Consent Decree violations that are not needed to prove the violations of Sections 63.71, 54.706 and 64.604(c)(5)(iii)(A) of the Commission's rules: (1) the existence of the Consent Decree; (2) the identity of the parties bound by the Consent Decree; and (3) the types of behavior prohibited by the Consent Decree. Thus, the Consent Decree violations are distinct from the violations of Sections 63.71, 54.706 and 64.604(c)(5)(iii)(A) of the Commission's rules, and the Double Jeopardy Clause is not implicated.

<sup>29</sup> Order to Show Cause at 9, ¶23.

<sup>30</sup> *Atlantic Broadcasting, supra*, at ¶ 10.

<sup>31</sup> 47 C.F.R. § 1.3. *See also Applications of State of New Hampshire and McCormick & Jacobson*, Memorandum Opinion and Order, 14 FCC Rcd 3607, 3613 ¶ 12 (WTB 1999).

17. Finally, as to Section VII of the Motion, the Commission thoroughly considered the inclusion of the Kintzel Brothers as parties in this proceeding from whom forfeiture and license revocation is sought. For example, the Commission took into consideration the Kintzel Brothers' ownership and control of the various entities covered by the Order to Show Cause.<sup>32</sup> Moreover, the Commission repeatedly refers to the Kintzel Brothers in addition to the entities they control throughout the Order to Show Cause.<sup>33</sup>

18. Because Sections III, IV, V and VII are not appropriate motions for modification of issues in the Order to Show Cause,<sup>34</sup> they are more properly viewed as petitions for reconsideration of the Order to Show Cause. However, petitions for reconsideration are outside the purview of the Presiding Judge's authority. Rather, such petitions "will be acted on by the Commission."<sup>35</sup> Thus, the Presiding Judge may not consider these portions of the Motion.

19. Even if the Presiding Judge could entertain a petition for reconsideration, the Motion as such is without merit. By its terms, Section 1.106(a)(1) provides that the Commission will entertain a petition for reconsideration of an order designating a case for hearing "if, and insofar as, the petition relates to an adverse ruling with respect to the petitioner's participation in the proceeding."<sup>36</sup> The only portion of the Motion that addresses the status of a party is Section VII, which seeks to delete the proposed individual liability of the Kintzel Brothers. However,

---

<sup>32</sup> See *id.* at 1, 3-9, ¶¶ 2, 5, 6, 8, 10-15, 17, 19-22.

<sup>33</sup> See *id.* at 1, 3, ¶¶ 2, 5, 6.

<sup>34</sup> This is especially true with respect to Sections III and VII of the Motion. Section III seeks reduction of the proposed forfeiture amounts. Section VII of the Motion seeks to removed the proposed liability of parties to this proceeding. These are not "issues" set for determination, and thus do not constitute the types of modifications contemplated by Section 1.229. 47 C.F.R. § 1.229(a).

<sup>35</sup> 47 C.F.R. § 1.106(a)(1).

<sup>36</sup> *Id.*

because the Kintzel Brothers are named as parties to this proceeding, there has been no adverse ruling with respect to the Kintzel Brothers' right to a hearing.<sup>37</sup> Thus, reconsideration is unavailable.

### **III. Modification of the Order to Show Cause to Include a More Definite Statement is Unavailable and Unjustified**

20. Section II of the Motion seeks a "more definite statement" regarding the number and instances of violations so that the Kintzels may "assess whether the Commission's proposed penalties are authorized under Section 503 or exceed statutory limits."<sup>38</sup> Section 1.229 applies only to motions seeking to enlarge, delete or modify issues.<sup>39</sup> Section II does not seek modification of an issue. Regardless, the Presiding Judge should deny the requested relief because the Order to Show Cause contains sufficient particularity regarding the calculation of the proposed forfeiture amounts, including citation to supporting authority.

21. According to the Motion, the Order to Show Cause states only "in very general terms the allegations" supporting the proposed forfeitures and "offers no detail on the number of instances that would justify such astounding penalties."<sup>40</sup> In support of this assertion, the Motion refers to paragraphs 31-33 of the Order to Show Cause.<sup>41</sup> However, the Motion fails to bring to the Presiding Judge's attention paragraphs 18-21 of the Order to Show Cause, which set forth the exact detail sought by the Motion. For example, paragraph 20 states:

---

<sup>37</sup> See, e.g., *Family Broadcasting, Inc.*, Order to Show Cause, 16 FCC Rcd 12801, 12803 ¶ 6 (2001); *Applications of Seattle Public Schools*, Memorandum Opinion and Order, 60 Rad. Reg. 2d 1073, ¶ 6 (1986); *Matter of RCA American Communications, Inc.*, Memorandum Opinion and Order, 69 FCC2d 426, ¶ 4 (1978).

<sup>38</sup> Motion at 3.

<sup>39</sup> See note 33, *supra*.

<sup>40</sup> Motion at 3.

<sup>41</sup> *Id.*

Issues are specified below to determine whether the Kintzel brothers engaged in conduct that violates paragraph 15 of the Consent Order. Each violation of this paragraph carries a potential forfeiture of \$130,000 per violation or each day of a continuing violation except that the amount assessed for any continuing violation shall not exceed \$1,325,000 for any single act or failure to act. The Kintzel brothers apparently failed to remit 12 consecutive monthly voluntary contributions required under paragraph 15. These apparent violations each represent a separate continuing violation, and it therefore shall be determined whether the Kintzel brothers are subject to a forfeiture in an amount not to exceed \$15,900,000.

Because the Order to Show Cause contains sufficient particularity regarding the “number of instances” supporting the proposed forfeiture amounts, a more definite statement is unnecessary.

22. The Motion further seeks a specific statement regarding “the authority upon which the imposition of fines is based, for each alleged violation.”<sup>42</sup> This request appears to be based upon the mistaken belief that the Order to Show Cause proposes penalties in excess of the statutory limits set by Section 503 of the Act.<sup>43</sup> However, the Motion fails to take into account Section 1.80(b) of the Commission’s rules, which provides that the maximum forfeiture allowed against a common carrier is “\$130,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,325,000 for any single act or failure to act described in paragraph (a) of this section.”<sup>44</sup> The Order to Show Cause expressly cites to Section 1.80(b).<sup>45</sup> It also cites to Section 1.95 of the

---

<sup>42</sup> *Id.*

<sup>43</sup> *See id.*

<sup>44</sup> 47 C.F.R. § 1.80(b). Pursuant to the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461, which requires federal agencies to adjust maximum statutory civil monetary penalties at least once every four years, Section 1.80(b) was amended in 2004 to increase the maximum available forfeiture amounts. *See Amendment of Section 1.80(b) of the Commission’s Rules, Order, 19 FCC Rcd 10945 (2004).*

<sup>45</sup> *See Order to Show Cause at 8, n. 37.*

Commission's rules<sup>46</sup> in support of the proposed forfeiture relating to the amounts for which the Kintzels could have been liable under the Order to Show Cause that initiated the original hearing that led to the Consent Decree at issue in the instant proceeding.<sup>47</sup> Additional particularity is unnecessary.<sup>48</sup>

### CONCLUSION

23. For the foregoing reasons, the Bureau respectfully requests that the Presiding Judge deny the Kintzels' Motion to Modify the Issues, or, in the Alternative, Statement of Objections to the Order to Show Cause.

---

<sup>46</sup> 47 C.F.R. § 1.95.

<sup>47</sup> Order to Show Cause at 7, ¶ 17.

<sup>48</sup> Even if the Order to Show Cause did not contain the specificity sought by the Motion regarding the number of instances of violations by the Kintzels, modification of the Order to Show Cause to include such additional information is unnecessary. The Kintzels are free to avail themselves of permissible discovery under the Commission's rules. Such discovery would provide the Kintzels with the relevant details and facts they need regarding the issues set for determination.

Respectfully submitted,  
Kris Anne Monteith  
Chief, Enforcement Bureau

A handwritten signature in black ink, appearing to read "Michele Levy Berlove". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michele Levy Berlove  
Attorney  
Investigations and Hearings Division

Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 4-C330  
Washington, D.C. 20554  
(202) 418-1420  
December 4, 2007



## **EXHIBIT 1**

January 17, 2007

Brian Hendricks, Esq.  
Investigations and Hearings Division  
Federal Communications Commission  
Brian.Hendricks@fcc.gov  
445 12<sup>th</sup> Street S.W. Room 4-A327  
Washington D.C. 20554

Cc: Eric J. Bash, Esq.  
Investigations and Hearings Division, Enforcement Bureau  
Federal Communications Commission  
Eric.bash@fcc.gov  
445 12<sup>th</sup> Street, S.W. Room 4-A460  
Washington, D.C. 20554

Dear Mr. Hendricks,

Per our telephone conversation, you extended our response date to January 20, 2007. This response is emailed today, January 17, 2007, with an original being mailed first class.

Below are my responses to your inquiries from your December 20, 2006 letter. Neither Business Options, Inc. nor Buzz Telecom, Corporation is in business and generating income that could pay for legal representation. Without legal council, I have responded to the best of my ability.

**Inquiry #1**

Business Options, Inc. and Buzz Telecom, Corporation (collectively hereafter known as "BOS") resold Qwest long distance services, primarily to residential customers. I received a notice via email on November 11, 2006 stating that the Qwest November invoice could now be viewed on-line. The actual invoice came several days later. Per the BOS contract with Qwest, the payment terms were net 10, thus the due date should have been November 21. On November 20<sup>th</sup>, Qwest sent another email late in the day giving a one day notice for payment or accounts would be suspended the following day.

To my knowledge, we had never even been thirty days late and we needed about a week as our billing was sent out late. I attempted to resolve the situation with Qwest, but to no avail. Qwest shut off nearly 28,000 BOS customers over the next 7 days.

So to generally answer your inquiry #1, BOS did discontinue service to its customers as a result of the psychotic actions by Qwest. 28,000 customers lost their long distance service and BOS was out of business within 17 days from the date the invoice was made available on-line. I'm sure this has never been done in the history of telecom, let alone any other business sector. We did discontinue service to every customer in every state we were providing services to; however, we did not do so intentionally and did not want to go out of business.

After the customers were shut off and Qwest customer service telephone lines lit up, Qwest proceeded to have another of their resellers contact BOS to get the disconnected customers some immediate help. Qwest proceeded to turn the customers service back on, but not under the BOS reseller account. I conveyed the company trade names and toll free number to the other Qwest reseller who began servicing the previous BOS customers. Additionally, there is another Buzz Telecom out of Canada.

If you see the name Business Options or Buzz Telecom arise from any sales call, service issue, or billing situation after November 2006, please know that it is not affiliated with me, Business Options, Inc. an Illinois corporation or Buzz Telecom, Corporation a Nevada corporation. BOS has not marketed to new customers since September 2006 or serviced or billed any customers since November 2006.

1a) Buzz Telecom, Corporation and Business Options, Inc. have both discontinued providing long distance service.

1b) The states in which BOS had no customers are: Alaska, Arizona, Connecticut, Hawaii, Maine, Utah, and Vermont. BOS had customers in every other state.

1c) BOS service was discontinued between November 18<sup>th</sup> and November 30<sup>th</sup>, 2006 to all existing customers.

1d) Because BOS had no intention of discontinuing long distance service to its customers, BOS had not requested authorization to discontinue service from the FCC or any state, thus no permission was granted.

2. I've attached copies of invoices from USAC dated January 4, 2007. On the invoices, Buzz Telecom, Corporation owes USAC \$2,869.55 due on February 2, 2007 and Business Options, Inc. owes USAC \$2,262.40 due on February 2, 2007.

The invoices were attached to a letter from USAC stating, "The Commission has determined that the outstanding debt, including presently accrued interest, administrative costs, and penalties owed is \$2,869.55" (\$2,262.40 for Business Options, Inc.).

I am not through much of the paperwork that I had staff members handling before I had to terminate their employment. I can forward other USF data as it arises.

3. The last TRS contribution invoices I could locate were from August and September of 2005. The amounts were \$2.27 and \$2.28 respectively and both were paid.

4. To my knowledge, all TRS payments due at the date of the Consent Decree have been paid.

5. To my knowledge, the past due Universal Service charges as set forth in the Consent Decree totaling \$772,659.56 has been completely satisfied.

6. The voluntary contribution of \$510,000 has not been completely satisfied.

6a. May 15, 2004 through July 15<sup>th</sup> 2005 were paid. August 15, 2005 to present have not been paid.

6b. Per my records, \$160,500 has been paid and \$192,600 is past due.

6c. After the negotiations were concluded between BOS and the FCC, my attorney filed suit against BOS for non-payment. Although their initial quote to represent BOS was \$25,000, which I had agreed to, the length of the representation including depositions in Indiana increased their fees substantially. BOS paid over a quarter of a million dollars to our attorneys, 10X the initial quote, but still had a ½ million dollar balance. Defending BOS again against one of the largest attorney firms in New York took time and money.

At the same time the FCC and then our attorneys were suing BOS, the Equal Employment Opportunity Commission, a different branch of the Federal Government, filed a sexual harassment suit against BOS stating a sales manager had harassed four telemarketers. The case lasted three years and went to a full jury trial. After two weeks of testimony, the jury returned from deliberation almost immediately voting unanimously in our favor. However, the cost to defend BOS against the EEOC and its enormous staff and resources, was over \$500,000 and many, many hours of investigation, coordination and preparation.

Defending ourselves against the FCC, our attorneys, and the EEOC depleted our operating expenses and more than that, continually took attention away from expanding, or at least maintaining, the telecom customer billing base.

Our customer base shrunk from nearly 50,000 customers to less than 15,000 customers. There was no longer enough working capital to pay all obligations made. I know this is a long-winded answer, but it is what occurred and the reason we ended up short on working capital and not paying the voluntary contribution.

7. BOS established an excellent code of conduct that conformed to the consent decree.

7a. Three copies of the Code of Conduct are attached as it was updated.

7b. The code itself has a place for the reader to sign as an attestation of their full understanding.

7c. Kurtis and Keanan Kintzel were responsible for developing and drafting the code of conduct. The Code of Conduct was presented to prospective employees for signatures at the time of hire, along with their employment contract. The Director of Personnel was the person responsible for ensuring that new and existing sales representatives had viewed and acknowledged by means of a signature the Code of Conduct.

*All Sales Representatives were required to read, understand and sign this Code of Conduct prior to starting their job. To the best of my knowledge, this was done in every case.*

7d. I have attached copies for three sales representatives reaffirmations. Each of the three representatives I chose to include worked at BOS from before the Consent Decree was signed so you can see that this Code of Conduct was renewed. After the EEOC suit concluded, we cleaned all personnel files of items that were not legally mandated and there was no agreement in the Consent Decree to keep copies of these reaffirmations so the latest reaffirmations, summer of 2006 and possibly winter of 2005, are attached. Our Regulatory Department was to do this action every six months.

8. BOS established written policies concerning the national "Do Not Call" list.

8a. Copies of the Policies and procedures are identified and attached. These policies were distributed to each employee that worked for BOS at the time they were created and then became part of the initial sales representative training for new hires.

8b. Customer names were put into a database and the submission slips were not retained. BOS stopped all marketing efforts to new customers in September of 2006. I do not know where or if the database is stored. To my knowledge, BOS has never had a legal complaint for calling someone on the Do Not Call list thus nor do I know of any regulation stating the database or list has to be retained if no new marketing is being done.

9. BOS previously sent to the FCC the recorded verifications on the nine complaints being requested. BOS no longer has an account with the verification company and has been prohibited by it from retrieving these verifications a second time.

9a. A copy of the verification contracts between BOS and The Verification Company and BOS and Voice Log are identified and attached.

9b. Verification scripts are attached.

9c. The fully executed contracts between BOS and the verification companies are the documents reflecting instructions to the verification companies. The contracts are attached.

9d. The verification scripts are attached and based upon applicable rules and regulations. In fact, one representative of Voice Log told me that our verification script is the longest he had ever seen. Additionally, the verification companies are two of the largest in the industry and describe themselves as experienced and expert in their knowledge and ability to perform their specific duties.

9e. The contracts between The Verification Company and Buzz Telecom and Voice Log and Buzz Telecom list addresses. Buzz Telecom Corporation is located in Merrillville,

Indiana and all its employed representatives work out of Merrillville, Indiana. In the spring of 2006, Buzz began utilizing Telecommunications on Demand, Inc. to assist in its marketing efforts. TOD utilized three call centers in the Orlando area of Florida, one in Las Vegas and one in Ohio. The Verification Company is located in the Tampa area of Florida and all of their verification representatives work out of their headquarters. Voice Log lists Maryland as their corporate headquarters in the contract. I've never been to the Voice Log offices and have no idea where their representatives are physically located, but attest that neither they nor any representative from The Verification Company is working out of my office.

10. There were no complaints attached to the letter I received by fax from Mr. Harkrader. All verifications for the past few years have been done by either The Verification Company or Voice Log as described in 9-9e above. The Verification Company did approximately 99% of the verifications for BOS.

11. A list of complaints received by BOS since May 1, 2006 is being compiled and will be forwarded. The verifications scripts and sales scripts are attached. Nearly all complaints originated from the independently contracted marketing firm. The penalty to the sales representatives in the contracted firm were 1) TOD, the company itself, was ordered to cease and desist from marketing for BOS and a bit later 2) the TOD contract with BOS was terminated.

As to the verification companies, their locations, etc. my response is the same as 9-9e above.

12. The sales script used is attached. I did not locate our oldest script, but did attach the verification script from the older sales script.

13. BOS purchased a lead base of all residential customers located in the United States. Billing Concepts supplied BOS with a database of numbers that they could not LEC bill. BOS added to this database numbers from the national, state, and company Do Not Call lists. The leads base was scrubbed against the do not call database to provide a national list of residential customers that could be called. Approximately 300 leads per day per representative from this list were then printed and given to sales representatives to be called.

13a. If a telephone number was not on a Do Not Call list and could be LEC billed, it would be printed out for sales representatives to call. There were no other criteria to select persons to call.

13b. No target marketing has ever been done. We've never bought lists of selected groups, ages, organizations, etc. At one time, we did give senior citizens an additional 10% discount, similar to Denny's Restaurant or the movie theaters. We did not target seniors, but offered this discount if they stated that they were a senior citizen. To the detriment of the consumers, two states accused BOS of targeting seniors so we stopped giving seniors a 10% discount.

14. In the spring of 2006, BOS began using Telecommunications on Demand, Inc. ("TOD") to generate new customers for the Buzz Telecom network. TOD utilized five call centers, sub-agents of TOD. *As I'm sure your records indicate, we have had virtually no FCC or state inquiries over the past four years and the increase of inquiries started when we began outsourcing our marketing of new customers.* Also in the spring of 2006, we reduced our in-house sales staff by 80%.

14a. The contract between Buzz Telecom and TOD is attached.


14b. They were to use the same sales scripts as BOS. All customers generated by TOD were put through the same verification procedures as were established for BOS sales representatives, by the same verification companies and BOS paid for the verifications to be done.

15. Until October of 2006, BOS utilized LEC billing to bill nearly all of its customers and never had the ability to insert promotional materials into the LEC bills. Prior to October 2006, I recall doing only one bill inserts for a nutritional product to the small group of direct billed customers we did have. Since we did not get any responses, we ceased doing the promotion after a month or so. I do not have a copy of this particular promotion.

In October of 2006, we began direct billing our entire customer base. The following notices and promotions are attached: 1) October notice to customers that we were switching to direct bill from LEC bill, 2) holiday letter written by Keanan Kintzel sent in the November invoice to customers announcing we were lowering all of their intrastate rates from 13.9 cpm to 8.9 cpm, a 40% reduction in their rates, 3) \$100 free long distance gift certificate for those that stayed with our firm for 12 months continuously and paid their bill on time each month. This was to go out in the November invoice, but the company that did our mailing forgot to insert the certificate. I believe the certificates were put on an auto responder for those customers that emailed us and would have been sent out with the December invoices had our customers not been disconnected.

Lastly and as an update to you, I have sent letters from Business Options, Inc. and Buzz Telecom, Corporation to each state's Secretary of State asking for them to cancel our right to transact business in their state and to each state's Public Utility Commission requesting our certificates to resell long distance service be cancelled. We're done.

Respectfully Submitted,

  
Kurtis Kintzel, President  
Business Options, Inc.  
Buzz Telecom, Corporation

## **EXHIBIT 2**



DOCKET FILE COPY ORIGINAL FCC MAIL SECTION

Before the FEB 20 11 54 AM-08  
FEDERAL COMMUNICATIONS COMMISSION 03046  
Washington, D.C. 20554

In the Matter of	)	EB Docket No. 03-85
	)	
BUSINESS OPTIONS, INC.	)	File No. EB-02-TC-151
	)	
Order to Show Cause and Notice of	)	NAL/Acct. No. 200332170002
Opportunity for Hearing	)	FRN: 0007179054
	)	

**CONSENT ORDER**

Issued: February 18, 2004

Released: February 20, 2004

This is a ruling on Joint Request for Adoption of Consent Decree and Termination of Proceeding, filed on February 17, 2004, by the Enforcement Bureau ("Bureau") and Business Options, Inc. ("BOI") in accordance with §§ 1.93 and 1.94 of the Commission's rules [47 C.F.R. §§ 1.93, 1.94].<sup>1</sup>

This proceeding was set for hearing by *Order to Show Cause and Notice of Opportunity for Hearing*, 18 F.C.C. Rcd 6881, released April 7, 2003 ("OSC"). Issues were specified to determine whether BOI had made misrepresentations or engaged in lack of candor (Issue a); to determine whether BOI had changed consumers' preferred carrier without their authorization in willful or repeated violation of § 258 of the Communications Act of 1934, as amended (the "Act") and §§ 64.1100-1190 of the Commission's rules (Issue b); to determine whether BOI had failed to file FCC Form 499-A in willful or repeated violation of § 64.1195 of the Commission's rules (Issue c); to determine whether BOI had discontinued service without Commission authorization in willful or repeated violation of § 214 of the Act and §§ 63.71 and 63.505 of the Commission's rules (Issue d); to determine whether BOI's authorization pursuant to § 214 of the Act to operate as a common carrier should be revoked (Issue e); and to determine whether the BOI and/or its principals should be ordered to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission (Issue f). *See OSC*, 18 F.C.C. Rcd at 6894 (¶ 36).

---

<sup>1</sup> The parties submitted a draft *Consent Order* to the Presiding Judge for consideration in accordance with § 1.94(b)(7). The *Consent Order* provides for termination of the proceeding after the period prescribed for a Commission review *sua sponte* has expired. *See* § 1.94(e) of the Commission's rules. There has been no change, addition, or modification of the *Consent Decree*.

If it were shown that BOI willfully or repeatedly violated the provisions of the Act or the Commission's rules noted above, then it would further be determined whether a forfeiture, in the maximum amount of \$80,000 for each unauthorized conversion of listed complainants' long distance service, \$3,000 for the failure to file a sworn statement, and \$120,000 for the unauthorized discontinuance of service, should be imposed. See OSC, 18 F.C.C. Rcd at 6894-95 (¶ 39).

By *Memorandum Opinion and Order*, FCC 03M-33, released August 20, 2003 ("MO&O"), additional issues were specified to determine whether BOI and its related entities, Buzz Telecom Corp. ("Buzz"), U.S. Bell and/or Link Technologies (collectively, "U.S. Bell") failed to make required universal service contributions in violation of § 254(d) of the Act and § 54.706 of the Commission's rules (Issue g); to determine whether BOI, Buzz and/or U.S. Bell had failed to make required contributions to the Telecommunications Relay Services Fund in violation of § 64.604(c)(5)(iii)(A) of the Commission's rules (Issue h); and to determine whether BOI, Buzz and/or U.S. Bell failed to file Telecommunications Reporting Worksheets ("Worksheets") in violation of §§ 54.711, 54.713 and 64.604(c)(iii)(B) of the Commission's rules (Issue i). In addition, if it were shown that BOI, Buzz and/or U.S. Bell willfully or repeatedly violated the provisions of the Act or the Commission's rules noted above, then it would further be determined whether a forfeiture, in the amount of \$115,533.52 for the failures to make required universal service contributions, \$10,000 for each failure to timely file Worksheets, and \$10,000 for each failure to make required contributions to the TRS Fund (Issue j) should be imposed. *Memorandum Opinion and Order*, FCC 03M-33 at 4 (¶ 10), *clarified*, *Memorandum Opinion and Order*, FCC 03M-57, released December 23, 2003, and *clarification Order*, FCC 04M-04, released January 30, 2004.

By *Memorandum Opinion and Order*, FCC 03M-54, released December 9, 2003, Issues b, c and d were resolved by summary decision against BOI. By *Memorandum Opinion and Order*, FCC 03M-58, released December 24, 2003, Issues g, h, and i were resolved against BOI, Buzz and U.S. Bell. See 47 C.F.R. § 1.94 (f) (consent decree provisions shall not effect procedures for resolving issues by summary decision after hearing designation. There were no findings of misrepresentation or lack of candor, or of any case dispositive issue in connection with either of these summary decisions.

#### Public Interest

BOI, its affiliates (Buzz and U.S. Bell) and their management company, Avatar Enterprises, Inc. (collectively, the "Companies"),<sup>2</sup> and the Bureau have entered into a *Consent Decree* which would resolve all of the issues. Approval of the *Consent Decree* authorizes terminating this proceeding.

---

<sup>2</sup> BOI, Buzz and U.S. Bell, Inc. and, its successor, Link Technologies, are owned and controlled by Kurtis Kintzel and his brother, Keanan Kintzel. In addition, both BOI and Buzz are "managed" by another entity, Avatar Enterprises, Inc., which is also owned and controlled by Kurtis and Keanan Kintzel.

Approval of the *Consent Decree* will further the public interest by securing repayment of BOI's universal service debt, adequately sanctioning BOI for the violations cited in the summary decisions, and instituting a compliance plan that will ensure that BOI remains current with its universal service and TRS obligations and that will ensure compliance with the Commission's slamming and reporting requirements, in exchange for the prompt disposition of this proceeding's remaining issues. In addition, the *Consent Decree* requires BOI to make a voluntary payment (not a fine or a forfeiture) in the amount of \$510,000 to the United States Treasury over four years.<sup>3</sup>

The *Consent Decree* will secure future compliance with the law by the Companies and their principals in exchange for the prompt disposition of this proceeding. See § 1.93(b) of the Commission's rules. Accordingly, based upon a review and evaluation of the *Consent Decree*, it is concluded that the requirements of §§ 1.93 and 1.94 of the Commission's rules are satisfied, and that the public interest would be served by approval.

The *Consent Decree* is to be filed with the Secretary and placed on the public record by the effective date of this *Consent Order*.

### Rulings

IT IS ORDERED pursuant to § 1.94(d) of the Commission's rules, that the *Consent Decree* IS APPROVED.

IT IS FURTHER ORDERED pursuant to § 1.94(d) of the Commission's rules, that the record of this proceeding IS CLOSED.

IT IS FURTHER ORDERED pursuant to § 1.94(b)(7) of the Commission's rules, that all of the issues specified in the *Order to Show Cause and Notice of Opportunity for Hearing* ARE RESOLVED.

---

<sup>3</sup> The amount of the voluntary payment was determined as follows: \$115,000 (essentially, the maximum figure cited in the most recent clarification of the issue, *see Order*, FCC 04M-04, released January 30, 2004) for BOI's repeated failures to make universal service contributions in a timely manner; \$3,000 (the maximum provided in the OSC) for BOI's willful failure to timely file its Registration Statement; \$12,000 (below the maximum allowed by the OSC but not inconsistent with precedent, *see, e.g., Broadstreet Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 7938 (Enf. Bur. 2002)) for the unauthorized discontinuation of service in Vermont; \$40,000 (below the maximum allowed by the OSC but not inconsistent with precedent (*see, e.g., 47 C.F.R. § 1.80, note to section (b)(4), Section 1*) for each of nine unauthorized changes of long distance telephone service for a total of \$360,000; \$10,000 (the maximum allowed by MO&O, FCC 03M-33) for BOI's willful failure to timely make its TRS contribution; and \$10,000 (less than what MO&O, FCC 03M-33 allowed but consistent with 47 C.F.R. § 1.80, note to section (b)(4), Section 1) for BOI's repeated failures to timely file Worksheets.

IT IS FURTHER ORDERED that pursuant to § 1.94(e) of the Commission's rules, the Joint Request for Adoption of Consent Decree and Termination of Proceeding IS GRANTED.<sup>4</sup>

FEDERAL COMMUNICATIONS COMMISSION<sup>5</sup>



Richard L. Sippel  
Chief Administrative Law Judge

---

<sup>4</sup> However, the Commission may review the *Consent Decree* on its own motion under § 1.302 of the Commission's rules. See § 1.94(e). Therefore, this *Consent Order* and the *Consent Decree* will become effective and this proceeding is terminated 50 days after its public release if the Commission does not review the *Consent Order* and/or the *Consent Decree* on its own motion. 47 C.F.R. § 1.302.

<sup>5</sup> Courtesy copies of this *Consent Order* were sent to counsel for the parties by fax or e-mail on the day of issuance.

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	EB Docket No. 03-85
	)	
BUSINESS OPTIONS, INC.	)	File No. EB-02-TC-151
	)	
Order to Show Cause and	)	NAL/Acct. No. 200332170002
Notice of Opportunity for Hearing	)	
	)	FRN: 0007179054

**CONSENT DECREE**

1. The Enforcement Bureau (the "Bureau") of the Federal Communications Commission ("FCC" or "Commission") and Business Options, Inc. ("BOI") hereby enter into this Consent Decree for the purpose of terminating the above captioned proceeding (the "Proceeding") initiated by an Order to Show Cause and Notice of Opportunity for Hearing ("Order to Show Cause") issued by the Commission on April 7, 2003.<sup>1</sup>

2. For purposes of this Consent Decree, the following definitions shall apply.

- (a) "Affiliates" means any entity owned, directed or controlled by either Kurtis J. Kintzel, and/or Keanan Kintzel, which provides or markets long distance telephone service.
- (b) "AVATAR" means Avatar Enterprises, Inc., all d/b/a entities, and any entity owned, directed or controlled by AVATAR or its principals, Kurtis J. and Keanan Kintzel, including all subsidiaries, commonly-owned affiliates, successors, and assigns that provide or market long distance telephone service.
- (c) "BOI" means Business Options, Inc., all d/b/a and related entities that provide or market the sale of long distance telephone service, including U.S. Bell, Inc., Link Technologies, Buzz Telecom Corporation, and any entity owned, directed or controlled by the company or its principals, Kurtis J. Kintzel and Keanan Kintzel, including all subsidiaries, commonly-owned affiliates, successors, and assigns that are engaged in the business of providing or marketing long distance telephone service.
- (d) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.

---

<sup>1</sup> See *Order to Show Cause and Notice of Opportunity for Hearing*, 18 FCC Rcd 6881 (2003).

- (e) "BUZZ" means Buzz Telecom Corporation, all d/b/a entities, and any entity owned, directed or controlled by BUZZ or its principals, Kurtis J. Kintzel and Keanan Kintzel, including all subsidiaries, commonly-owned affiliates, successors, and assigns that are engaged in the business of providing or marketing long distance telephone service.
- (f) The "Companies" means BOI, U.S. Bell/LINK, BUZZ, and AVATAR.
- (g) "Customer" means a consumer (a natural person, individual, governmental agency or entity, partnership, corporation, limited liability company or corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized) offered, receiving, or previously receiving inter-exchange services from the Companies.
- (h) "Discontinuance Application" means the application that must be filed by a domestic carrier before it discontinues, reduces or impairs service as prescribed in 47 C.F.R. § 63.71 (2002).
- (i) "Effective Date" means the date on which the Order becomes a Final Order.
- (j) "FCC" or the "Commission" means the Federal Communications Commission and all of its bureaus and offices.
- (k) "Final Order" means an order that is no longer subject to administrative or judicial reconsideration, review, appeal, or stay.
- (l) "Independent Third Party Verifier" means, in addition to the qualifications set forth in 47 C.F.R. § 64.1120(c)(3), an entity (i) whose employees are not paid directly by the Companies, (ii) whose owners are not employed by the Companies in any way, and (iii) whose employees and/or owners are not related by blood or marriage to Kurtis or Keanan Kintzel.
- (m) "Misleading" means a misrepresentation, omission, or other practice that is intended or could reasonably be expected to deceive, confuse or misinform a reasonable consumer acting reasonably under the circumstances.
- (n) "Order" means the order of the presiding officer adopting the terms of this Consent Decree without change, addition, or modification.
- (o) "Order to Show Cause" means the Order to Show Cause and Notice of Opportunity for Hearing, 18 FCC Rcd 6881 (2003).

- (p) The "Parties" means the Companies and the Bureau.
- (q) The "Proceeding" means the evidentiary hearing initiated by the Order to Show Cause.
- (r) "Registration" means the filing of the information set forth in 47 C.F.R. § 64.1195 (2002).
- (s) "Re-provisioning" means the practice of changing a former customer's long distance telephone service back to the Companies without obtaining authorization or verification of any authorization from that customer for the change.
- (t) "Sales Call" means a telephone solicitation for the purpose of obtaining or re-obtaining a customer for the Companies' long distance telephone service.
- (u) "Sales Representative" means a person working for or on behalf of the Companies, whose job involves soliciting potential customers for the Companies' long distance telephone service.
- (v) "Slamming" means the changing of a telephone owner's long distance carrier without following the procedures set forth in 47 C.F.R. § 64.1120 (2002).
- (w) "U.S. Bell/LINK" means U.S. Bell, Inc. and its successor, Link Technologies, including all subsidiaries, commonly-owned affiliates, successors, and assigns.

## **I. BACKGROUND**

3. On April 7, 2003, the Commission released the Order to Show Cause, initiating an evidentiary hearing to determine whether BOI had (1) made misrepresentations or engaged in lack of candor, (2) changed consumers' preferred carrier without their authorization in willful or repeated violation of section 258 of the Act<sup>2</sup> and sections 64.1100-1190 of the Commission's rules,<sup>3</sup> (3) failed to file FCC Form 499-A in willful or repeated violation of section 64.1195 of the Commission's rules,<sup>4</sup> and (4) discontinued service without Commission authorization in willful or repeated violation of section 214 of the Act<sup>5</sup> and sections 63.71 and 63.505 of the Commission's

---

<sup>2</sup> 47 U.S.C. § 258.

<sup>3</sup> 47 C.F.R. §§ 64.1100-1190 (2002).

<sup>4</sup> 47 C.F.R. § 64.1195 (2002).

<sup>5</sup> 47 U.S.C. § 214.

rules.<sup>6</sup> The Commission ordered BOI to show cause why BOI's operating authority under section 214 of the Act<sup>7</sup> should not be revoked and why BOI's principals should not be ordered to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission. The Order to Show Cause put BOI on notice that the Commission could order a forfeiture of as much as \$80,000 for each unauthorized conversion of named complainants' long distance service, \$3,000 for the failure to file a sworn statement or Registration Statement, and \$120,000 for the unauthorized discontinuance of service. The Bureau was made a party to the Proceeding.

4. On August 20, 2003, the presiding officer issued a Memorandum Opinion and Order<sup>8</sup> expanding the hearing to determine whether: 1) BOI, BUZZ and/or U.S. Bell/LINK had failed to make required contributions to federal universal service support programs in violation of section 254(d) of the Act<sup>9</sup> and section 54.706 of the Commission's rules;<sup>10</sup> 2) BOI, BUZZ and/or U.S. Bell/LINK had failed to make required contributions to the Telecommunications Relay Services ("TRS") Fund, in violation of section 64.604(c)(5)(iii)(A) of the Commission's rules;<sup>11</sup> and 3) BOI, BUZZ, U.S. Bell/LINK had failed to file Telecommunications Reporting Worksheets in violation of sections 54.711, 54.713 and 64.604(c)(iii)(B) of the Commission's rules.<sup>12</sup> The presiding officer also put BOI, BUZZ and/or U.S. Bell/LINK on notice that the Commission could order a forfeiture for the failure to make required universal service contributions and a forfeiture of as much as \$10,000 for each failure to file required TRS contributions and for each failure to file Telecommunications Reporting Worksheets.<sup>13</sup>

5. On December 9, 2003, the presiding officer granted the Bureau's first motion for partial summary decision, finding that BOI had changed consumers' long distance telephone service on sixteen occasions without following Commission verification procedures in violation of section 258 of the Act<sup>14</sup> and section 64.1120(c) of the Commission's rules,<sup>15</sup> had willfully failed to file its FCC Form 499-A in violation of

<sup>6</sup> 47 C.F.R. §§ 63.71 and 63.505 (2002).

<sup>7</sup> 47 U.S.C. § 214.

<sup>8</sup> *Memorandum Opinion and Order*, FCC 03M-33 (Aug. 20, 2003).

<sup>9</sup> 47 U.S.C. § 254(d).

<sup>10</sup> 47 C.F.R. § 54.706 (2002).

<sup>11</sup> 47 C.F.R. § 64.604(c)(5)(iii)(A) (2002).

<sup>12</sup> 47 C.F.R. §§ 54.711, 54.713 and 64.604(c)(iii)(B) (2002).

<sup>13</sup> *Memorandum Opinion and Order*, FCC 03M-33 (Aug. 20, 2003).

<sup>14</sup> 47 U.S.C. § 258.

<sup>15</sup> 47 C.F.R. § 64.1120(c) (2002). BOI's violations included failures to elicit required information, failures to obtain authorization of any kind, failures to use independent third party verifiers and failures to obtain verification for each service switched. Of the sixteen violations, nine occurred within one year of the release date of the Order to Show Cause,



section 64.1195 of the Commission's rules,<sup>16</sup> and had discontinued service to customers in Vermont without Commission authorization in violation of section 214 of the Act<sup>17</sup> and section 63.71 of the Commission's rules.<sup>18</sup>

6. On December 24, 2003, the presiding officer granted the Bureau's second motion for partial summary decision, finding that BOI had willfully and repeatedly failed to make required contributions to federal universal service support programs in violation of section 254(d) of the Act<sup>19</sup> and section 54.706 of the Commission's rules,<sup>20</sup> had willfully and repeatedly failed to make TRS Fund contributions in violation of section 64.604(c)(5)(iii)(A) of the Commission's rules,<sup>21</sup> and had willfully and repeatedly failed to file Telecommunications Reporting Worksheets in a timely manner in violation of sections 54.711 of the Commission's rules.<sup>22</sup>

7. On January 28, 2004, pursuant to section 1.94(a) of the Commission's Rules,<sup>23</sup> the Bureau informed the presiding officer of the initiation of the negotiations that lead to this Consent Decree. Pursuant to section 1.93(b) of the Commission's rules,<sup>24</sup> the Bureau negotiated this Consent Decree to secure future compliance with sections 214, 254, and 258 of the Act<sup>25</sup> and related Commission rules in exchange for prompt disposition of the issues raised in the Order to Show Cause, other than the issues already adjudicated by the presiding officer.

## II. AGREEMENT

8. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties of the Proceeding and the Order to Show Cause. In consideration for the termination of this Proceeding in accordance with the

---

and only those nine would be considered in determining a forfeiture penalty. See *Memorandum Opinion and Order*, FCC 03M-54 at 8, n. 12 (Dec. 9, 2003).

<sup>16</sup> 47 C.F.R. § 64.1195 (2002).

<sup>17</sup> 47 U.S.C. § 214.

<sup>18</sup> 47 C.F.R. § 63.71 (2002). *Memorandum Opinion and Order*, FCC 03M-54 (Dec. 9, 2003).

<sup>19</sup> 47 U.S.C. § 254(d).

<sup>20</sup> 47 C.F.R. § 54.706 (2002).

<sup>21</sup> 47 C.F.R. § 64.604(c)(5)(iii)(A) (2002).

<sup>22</sup> 47 C.F.R. § 54.711 (2002). *Memorandum Opinion and Order*, FCC 03M-58 (Dec. 24, 2003).

<sup>23</sup> 47 C.F.R. § 1.94(a).

<sup>24</sup> 47 C.F.R. § 1.93(b).

<sup>25</sup> 47 U.S.C. §§ 214, 254 and 258.

terms of this Consent Decree, the Parties agree to the terms, conditions, and procedures contained herein.

9. The Companies admit that they operate as resellers of interstate telecommunications services and that the FCC has jurisdiction over them and the subject matter of this Proceeding for the purposes of this Consent Decree. The Companies represent and warrant that they are the properly named parties to this Consent Decree and are solvent and have sufficient funds available to meet fully all financial and other obligations set forth herein. The Companies further represent and warrant that they have caused this Consent Decree to be executed by their authorized representative, Kurtis J. Kintzel, as a true act and deed, as of the date affixed next to said representative's signature. Kurtis J. Kintzel and the Companies respectively affirm and warrant that he is acting in his capacity and within his authority as a corporate officer of the Companies, and on behalf of the Companies, and that by his signature Kurtis J. Kintzel is binding the Companies to the terms and conditions of this Consent Decree. The Companies and their principals, Kurtis J. Kintzel and Keanan Kintzel, also represent that they have been represented by counsel of their choice in connection with this Consent Decree and are fully satisfied with the representation of counsel.

10. The Parties waive their right to a hearing on the issues not already adjudicated which are designated in the Show Cause Order, including all of the usual procedures for preparation and review of an initial decision. The Parties waive their right to judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order, provided the presiding officer issues the Order without change, addition, or modification of this Consent Decree. The Companies also waive whatever rights they may have to contest the validity of the presiding officer's summary decisions discussed in paragraphs 5 and 6, above.

11. The Parties agree that the Show Cause Order may be used in construing this Consent Decree.

12. The Parties agree that this Consent Decree is for settlement purposes only and that signing does not constitute an admission by the Companies, or their principals, of any violation of law, rules or policy associated with or arising from its actions or omissions as described in the Order to Show Cause.

13. The Bureau agrees that, in the absence of material new evidence relating to issues described in the Order to Show Cause that the Bureau did not obtain through discovery in this Proceeding or is not otherwise currently in the Commission's possession, the Bureau and the Commission will not use the facts developed in this Proceeding, or the existence of this Consent Decree, to institute, on its own motion, any new proceedings, formal or informal, or to make any actions on its own motion against the Companies, or their principals, concerning the matters that were the subject of the Order to Show Cause. Consistent with the foregoing, nothing in this Consent Decree limits, *inter alia*, the Commission's authority to consider and adjudicate any formal

complaint that may be filed pursuant to section 208 of the Communications Act, as amended, and to take any action in response to such formal complaint.

14. For purposes of settling the matters set forth herein, the Companies and their Affiliates agree to take the actions described below.

- (a) Beginning on the Effective Date, no Sales Representative will make a Sales Call that is Misleading in any material respect or that represents, suggests or implies that:
  - (i) the Sales Call is a courtesy call;
  - (ii) the Companies, or any one of them, are taking or have taken over for another entity that provides long distance telephone service including, but not limited to, AT&T, Sprint, MCI or any former Bell operating company such as Verizon, SBC, or Qwest, unless such is actually the case;
  - (iii) the only service being sold is state-to-state unless such is actually the case; or
  - (iv) the Companies have a tariff on file with the FCC.
- (b) Beginning on the Effective Date, the Companies will verify any and all new and/or former customers only by using the procedures authorized by the Commission and/or applicable state public utility commissions, including those currently set forth in 47 C.F.R. § 64.1120(e). Any Independent Third Party Verifier used by the Companies shall not be located in the same building as any of the Companies.
- (c) Beginning on the Effective Date, for any telecommunications carrier that is providing or will provide interstate telecommunications service and that is owned, managed or controlled by Kurtis J. Kintzel and/or Keanan Kintzel, such telecommunications carrier shall comply with any Commission registration requirements, including those currently set forth in 47 C.F.R. § 64.1195.
- (d) Beginning on the Effective Date, none of the Companies will discontinue long distance telephone service to customers in any State unless it first receives authorization from the Commission and/or applicable state public utility commissions, including such authorization that is currently required by the FCC in accordance with 47 C.F.R. § 63.71.
- (e) Beginning on the Effective Date, the Companies will file their quarterly and annual Telecommunications Reporting Worksheets by the due dates specified thereon.
- (f) Beginning on the Effective Date, the Companies will make their current federal universal service contributions by the due date specified on each

invoice sent to them by the Universal Service Administrative Company ("USAC").

- (g) Beginning on the Effective Date, the Companies will make their TRS contributions by the due date specified on each invoice sent to them by the National Exchange Carrier Association ("NECA").
- (h) Beginning on the Effective Date, the Companies will pay (if they have not already done so) their past due TRS contributions as billed by the National Exchange Carrier Association ("NECA").
- (i) The Companies will pay their remaining past due federal universal service obligations of \$772,659.56 in 24 monthly payments of \$35,298.75 each, in accordance with the documents signed by the Companies and their representatives on February 12, 2004.
- (j) Prior to any sale, dissolution, reorganization, assignment, merger, acquisition or other action that would result in a successor or assign for provision of the Companies' interstate communications services, the Companies will furnish a copy of this Consent Decree to such prospective successors or assigns and advise same of their duties and obligations under this Order.
- (k) The Companies will be responsible for making the substantive requirements and procedures set forth in this Consent Decree known to their respective directors and officers, and to managers, employees, agents, and persons associated with the Companies who are responsible for implementing the obligations set forth in this Consent Decree. The Companies will, within thirty (30) days of the Effective Date, deliver to each of their current directors and officers, and to all Sales Representatives, written instructions as to their respective responsibilities in connection with the Companies' compliance and obligations under this Consent Decree. The Companies will distribute said instructions to all of their future directors and officers wherever located, and to all future Sales Representatives, on the date such individuals are appointed or hired to such positions.
- (l) The Companies will establish a Sales Representative Code of Conduct (the "Code"), which will conform to this Consent Decree and be reviewed and signed by all current Sales Representatives. As part of their initial training, each new Sales Representative will also sign the Code. All Sales Representatives will reaffirm semi-annually, in writing that they have recently reviewed, and fully understand, the Code. The Code will establish a strict quality standard, to which all Sales Representatives will be required to adhere. The Code will establish, *inter alia*, that all Sales Representatives will make representations consistent with the restrictions specified in paragraph 14(a) above.

- (m) Beginning on the Effective Date, the Companies will inform all Sales Representatives that violation of the provisions of paragraph 14(a) will result in mandatory penalties and increasingly severe measures for repeat offenders, including employee re-training, compensation reduction, suspension from work, and termination.
- (n) Beginning on the Effective Date, the Companies will promptly and in good faith address and resolve all complaints in a reasonable manner consistent with this Consent Decree. In all cases where the Companies conclude that Misleading statements were made by a Sales Representative, the Companies will contact the Customer and provide appropriate remedies.
- (o) Within 60 days from the Effective Date, the Companies will provide a formal report to the Bureau. The Companies will provide additional reports every twelve (12) months thereafter, with a final report due fifty (50) months from the Effective Date. Each report will include the following: (a) evidence of payment of the Companies' past due universal service obligations, the last of which is expected to occur no later than March 1, 2006; (b) evidence of payment of the Companies' most recent invoice from the Universal Service Administrative Company; (c) evidence of payment of the Companies' most recent invoice from NECA concerning TRS; (d) a copy of the Companies' Telecommunications Reporting Worksheets filed since the previous report; (e) the name(s) and address(es) of all Independent Third Party Verifiers used by the Companies since the previous report; and (f) information since the last report relating to all customer complaints based on alleged Misleading statements from Sales Representatives, including, the name and address of the customer, the name of the Sales Representative, a brief summary of the alleged Misleading statement, the disciplinary action taken, if any, against the Sales Representative, and the resolution of the complaint. If, by the date of the report, the Companies are still investigating one or more such complaints and/or have not yet acted on any such complaint(s), the report should so state.

15. The Companies will make a voluntary contribution (not a fine or a penalty) in the amount of \$510,000 in installments over a forty-eight (48) month period, with the first payment due May 15, 2004, and each successive payment due on the 15<sup>th</sup> day of the following month. The first forty-seven payments shall be in the amount of \$10,700; the forty-eighth and last payment shall be in the amount of \$7,100. The Companies may prepay this amount, and are encouraged to do so, without penalty. The Companies must make these payments by check, wire transfer or money order drawn to the order of the Federal Communications Commission, and the check, or money order must refer to NAL Acct. No. 200332170002 and FRN No. 0007179054. See 47 C.F.R. § 1.80(h). The Companies must mail the check or money order to: Forfeiture Collection

Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482.

16. In express reliance on the covenants and representations contained herein, the Bureau agrees to terminate this Proceeding and resolve the Show Cause Order.

17. The Companies represent and warrant that they shall not, for the purpose of circumventing any part of this Consent Decree, effect any change in their form of doing business or their organizational identity or participate directly or indirectly in any activity to form a separate entity or corporation which engages in acts prohibited in this Consent Decree or for any other purpose which would otherwise circumvent any part of this Consent Decree or the obligations of this Consent Decree. Nothing in the foregoing sentence shall be construed to prohibit the Companies from effecting any change in their form of doing business or their organizational identity, or participating directly or indirectly in any activity to form a separate entity or corporation, where such change does not have the effect of circumventing any part of this Consent Decree.

18. The Companies' and the Bureau's decision to enter into this Consent Decree is expressly contingent upon the signing of the Order by the presiding officer and the Order becoming a Final Order without revision, change, addition, or modification of this Consent Decree. The Parties agree that either the Bureau or the Companies may withdraw from this Consent Decree if any revision, change, addition, or modification is made to its terms.

19. The Parties agree that this Consent Decree shall become part of the record of this Proceeding only on its Effective Date.

20. If the Commission, or the United States on behalf of the Commission, brings a judicial action to enforce the terms of this Consent Decree, the Parties will not contest the validity of the Consent Decree, and the Companies and their Affiliates will waive any statutory right to a trial *de novo*. The Companies and their Affiliates do not waive any statutory right to a trial *de novo* to determine whether they violated this Consent Decree.

21. The Companies and their principals waive any rights they may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*

22. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

23. Any material violation of the Consent Decree, including the non-payment of any part of the forfeiture, will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order. The Commission agrees that before it takes any formal action in connection with any alleged or suspected violation of this Consent

Decree, the Companies or their Affiliates will be notified of the alleged or suspected violation and be given a reasonable opportunity to respond.

24. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission, where compliance with the provision would result in a violation, (except an order specifically intended to revise the terms of this Consent Decree to which the Companies and their principals do not consent) that provision will be superseded by such Commission rule or order.

25. By this Consent Decree, the Companies do not waive or alter their right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information. The status of materials prepared for, reviews made and discussions held in the preparation for and implementation of the Companies' compliance efforts under this Consent Decree, which would otherwise be privileged or confidential, are not altered by the execution or implementation of the terms of this Order and no waiver of such privileges is made by this Consent Decree.

26. The Parties agree that, within five (5) business days after the date of this Consent Decree, they will file with the presiding officer a joint motion and draft order requesting that the presiding officer sign the draft order, accept Consent Decree, and close the record. The Parties will take such other actions as may be necessary to effectuate the objectives of this Consent Decree.

27. This Consent Decree may be signed in counterparts.

For the Enforcement Bureau,  
Federal Communications Commission

\_\_\_\_\_  
David H. Solomon  
Chief

\_\_\_\_\_  
Date

For Business Options, Inc.  
U.S. Bell, Inc./Link Technologies  
Buzz Telecom Corporation  
Avatar Enterprises, Inc.

  
\_\_\_\_\_  
Kurtis J. Kintzel  
Chief Executive Officer

\_\_\_\_\_  
Date

Decree, the Companies or their Affiliates will be notified of the alleged or suspected violation and be given a reasonable opportunity to respond.

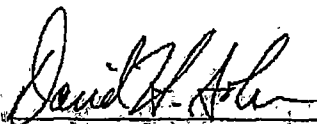
24. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission, where compliance with the provision would result in a violation, (except an order specifically intended to revise the terms of this Consent Decree to which the Companies and their principals do not consent) that provision will be superseded by such Commission rule or order.

25. By this Consent Decree, the Companies do not waive or alter their right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information. The status of materials prepared for, reviews made and discussions held in the preparation for and implementation of the Companies' compliance efforts under this Consent Decree, which would otherwise be privileged or confidential, are not altered by the execution or implementation of the terms of this Order and no waiver of such privileges is made by this Consent Decree.

26. The Parties agree that, within five (5) business days after the date of this Consent Decree, they will file with the presiding officer a joint motion and draft order requesting that the presiding officer sign the draft order, accept Consent Decree, and close the record. The Parties will take such other actions as may be necessary to effectuate the objectives of this Consent Decree.

27. This Consent Decree may be signed in counterparts.

For the Enforcement Bureau,  
Federal Communications Commission



David H. Solomon

Chief

2/13/04  
Date

For Business Options, Inc.  
U.S. Bell, Inc./Link Technologies  
Buzz Telecom Corporation  
Avatar Enterprises, Inc.

Kurtis J. Kintzel

Chief Executive Officer

Date



**CERTIFICATE OF SERVICE**

Rebecca Lockhart, a Paralegal Specialist in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has, on this 4th day of December, 2007, sent by first class United States mail copies of the foregoing **Enforcement Bureau's Opposition to Motion to Modify the Issues, or, in the Alternative, Statement of Objections to the Order to Show Cause to:**

Catherine Park, Esq.  
2300 M Street, NW, Suite 800  
Washington, D.C. 20037

Counsel for Kurtis J. Kintzel, Keanan Kintzel, Business Options, Inc.,  
Buzz Telecom Corporation, US Bell, Inc., Link Technologies and  
Avatar Enterprises

A copy of the foregoing was also served via hand-delivery to:

Administrative Law Judge Richard L. Sippel  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 1-C861  
Washington, D.C. 20054

  
Rebecca Lockhart